IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 66 of 2000..
Reserved on : 29-6-2007.
Date of Decision: July 20 ,2007

Land Acquisition Collector Appellant.

Versus

Jiwan Singh. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Mr. Shrawan Dogra, Advocate.

For the respondent : Mr. Baldev Singh, Advocate.

Surinder Singh, J

The instant appeal has been filed under Section 54 of the Land Acquisition Act by the Land Acquisition Collector feeling aggrieved by and dis-satisfied with the award passed by District Judge, Una in Land Reference Petition No.1 of 1997 on 31.12.1999 whereby he had enhanced the amount of compensation to the tune of rupees 33,000/- per kanal in place of Rs. 16, 600/- per kanal.

The brief facts of the case giving rise to the instant appeal are that the land measuring 14 kanal 18 marlas situated in village Bharolian Khurd, Tehsil and District Una was acquired by the H.P. State Electricity Board (HPSEB for short) for the public purpose, i.e, for building housing colony,132 K.V. sub power station etc. The notification under Section 4 of the Land Acquisition Act, 1894 (in short to be referred as 'Act') was issued on 23-2-1991, which was published in two Daily Newspapers and thereafter notification under Section 6 & 7 of the Act was also issued on 6.1.1992.

[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

Notice under Section 9 of the Act inviting objections from the land owners and other interested persons. Finally, award No. 124 was announced by the Collector on 28.1.1994 as per provisions of Section 11 of the Act awarding total amount of compensation to the tune of rupees 5, 23, 371/- for the land situated in khewat number 26 min, khatauni number 128 min, khasra number 1176 as per jamabandi for the year 1979-80. The land was ordered to be vested with the HPSEB free from all encumbrances.

The respondent alleged inadequacy and approached the District Judge under Section 18 of the Act through the Collector contending that the acquired land is situated within the municipal limits of Una Town which is nearer to the Main Market, Bus Stand, Railway Station, Government College and was best for the construction of houses and colonies etc., therefore, its market value, in any case was not less than rupees 15,000/- per marla and the award passed by the Collector was inadequate.

In reply, the Collector maintained the adequacy of the award. Thus on the pleadings of the parties, the learned District Judge framed the following issues to resolve the controversy:

> 1. Whether the compensation awarded by the LAC vide award No. 124 dated 28.1.1994 is inadequate and unjust, if so what should be the just and adequate compensation of the acquired land? OPP.
> 2. Relief.

With respect to issue no.1, the learned District Judge took note of the various decisions of this Court as well as of the Apex Court and put reliance upon two sales transactions Exhibit P1 and P2 and also the award Ext. P3 and enhanced the award in the following terms:

> "In view of the discussions and findings on issue No.1 above, it is held that the petitioner is entitled to the enhancement of the compensation of the land measuring 14 kanals 18 marlas and the petitioner is entitled to the compensation @ Rs.

33,000/- per kanal in place of Rs. 16,600/- awarded by the Collector. The petitioner is further entitled to:

a) solatium at the rate of 30% on the enhanced amount of compensation;

b) additional compensation under Section 23 (1) (a) at the rate of 12% per annum on the enhanced amount w.e.f. from the date of the notification under Section 4 (1) of the Act till the date of award of the Collector or the date of taking compensation of the acquired land, which ever is earlier ; and

c) interest at the rate of 9% on the enhanced compensation w.e.f. the date of taking possession of the acquired land for one year and thereafter at the rate of 15% per annum till the date of payment/deposit of the amount".

Collector, HPSEB felt aggrieved by the impugned award passed by the District Judge and assailed it in the appeal on the grounds that the District Judge mainly relied upon the award Exhibit P3 for assessing the market value whereas, in that case the land was abutting to the Nangal Una Highway and was having much commercial value than the land in question and further, that it was not made clear whether the value of the acquired trees standing on the land was included in the cost of the land or the same is in addition thereto.

I have heard Shri Shrawan Dogra, learned counsel for the appellant and Shri Baldev Singh, learned counsel for the respondent. While stressing the points raised in the grounds of appeal, Shri Dogra has forcefully argued that the learned trial Court has not awarded the statutory interest in accordance with law, therefore, the impugned award deserves to be set aside.

Contra, Shri Baldev Singh, learned counsel for the respondent has supported the impugned award.

I have bestowed my best considerations to the rival contentions and have carefully examined the evidence on record.

The first question whether value of trees standing on the land could be included in addition to the price of land?. In fact the appellant did not raise this plea before the learned District Judge that the value of the trees should be included in the price of the land nor any evidence to this effect was led.

In fact, the Land Acquisition Collector has awarded a separate compensation for land and trees. The reference Court cannot reduce the value assessed by the Collector. In reference the respondent has assailed the inadequacy of the award for land and trees but in reply to the petition, LAC of HPSEB has stated that the amount was rightly assessed for the land by the LAC and for trees by the Forest Department which has been paid along with interest. The parties were at issue only on the inadequacy of the compensation with respect to the land. The District Judge has relied upon the award Ext. P3 with respect to the land situated in the same village which had no trees. Though the trees go along with the land yet in the given case, if the trees are included in the value of land, the value would further escalate the value of the land as the award (Exhibit P3) relied upon by the District Judge pertains to one year prior to the award passed in this case. Therefore, in these circumstances, it is held that the amount of trees is in addition to the value of the land as assessed by the District Judge.

Now the next question is whether the value of the land was rightly and aptly assessed by the District Judge.

The apex Court in Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another, AIR 1988 SC 1652, has exhaustively dealt with the matter and has laid down the factors which are required to be kept in view while determining the market value of the acquired land. These factors are :-

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court

cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against Award approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceedings before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of the plaintiff who has to show that price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Ofcourse, the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of the land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of Notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of Land).

(9) Every post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations :

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis

land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would be.

(13) The market value of the land under acquisition has thereafter to be deducted by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (non exhaustive) factors were also considered which are:-

Plus factors.	Minus factors.
1. Smallness of size.	1. Largeness of area.
2. Proximity to a road.	2. Situation in the interior at distance from the road.
3. Frontage on a road.	3. Narrow strip of land with very small frontage frontage to compared to depth.
4. Nearness to developed area.	4. Lower level requiring the depressed portion to be filled up.
5. Regular shape.	5. Remoteness from developed locality.
6. Level vis-à-vis land under Acquisition.	6. Some special disadvanta-geous factor which would deter a purchaser.
7. Special value for an owner of an adjoining property to whom it may have some very special advantage.	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 10000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx, between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense".

It was further pointed out that evaluation of the above factors would depend on the facts and circumstances of each case and there cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide.

It is a settled law that in a reference under Section 18, the claimant being dis-satisfied with the award of the Land Acquisition Officer, when the proceedings are taken under Section 21 of the Act, the burden is always on the claimant like plaintiff to adduce reliable and acceptable evidence to prove proper just and adequate compensation to the acquired land. If such an evidence was adduced, burden shifts on the State to disapprove it. (Please see: ***State of U.P. and another –v- Rajendra Singh (1996) 7 Supreme Court Cases 347***).

In the instant case, the respondent had put reliance on the sale deed Exhibit P1 and P2 the details of which are given as under:

Sr. No.	Exhibit.	Date of acquisition.	Name of vendor.	Name of vendee.	Area.	Consideration amount.
1.	P1.	23.7.86.	Smt. Naresh Kumari.	Narinder Bhardwaj (PW3)	190.28.	37,500/-
2.	P2.	30.10.88.	Ranbir (PW2).	-do-	1kanal.	1,00000/-

According to PW3 Narinder Kumar, the land involved in sale deed Exhibit P1 is abutting the main rood in Municipal Area of Una whereas PW2 Ranbir has not stated the distance or location of the land mentioned in sale deed Ext. P2 and the acquired land. Both these witnesses did not know that the acquired land fell out of the municipal area of Una. On the other hand, the respondent had examined RW1 Sohan Lal, Registration Clerk to prove the sale deeds Exhibit RW1/A and RW1/B. Assistant Engineer was also examined to prove that the acquired land was situated at a distance of 100 meters away from the main road

and the compensation was adequately awarded by the Collector. It is relevant to note that for assessing the market value of the land Award Ext. P3 is an additional circumstance for placing reliance on such type of award as held in *Special Land Acquisition Officer, Broach .v. Punjabhai Narshibhai Patel etc. AIR 1991 Gujarat 16.* According to PW4 Jiwan Singh, the land covered in award Ext. P3 is only one furlong away from the acquired land. Therefore, the learned District Judge put reliance on this award and allowed the enhancement on its basis.

As noticed above, the sale transaction put forth by the parties was with respect to small portions of the land. (Please see: *Administrative General of West Bengal v. Collector Varanasi AIR 1988 Supreme Court 943*).

In *Karam Chand –v- State of H.P. 1996 (2) S.L.C. 179*, it was held by the Division Bench of this Court that deductions can be allowed while assessing the market value of the land as the prices can very well neutralize with the rise in price during the intervening period.

The location of the land involved in the aforesaid sale deeds from the land acquired is not made clear in the evidence led by the parties. Therefore, the award Exhibit P3 was rightly relied upon by the learned District Judge which was decided on 1.6.1998 in respect of the land situated in the same village and is later in point of time. On the basis of the award Ext. P3, the District Judge had rightly awarded an amount of rupees 33,000/- per kanal which is upheld. Therefore, in my considered opinion the appellant could not make out a case for interference by this Court regarding the value of land, to this extent the appeal is dismissed except the statutory part of the interest with respect to Section 23 (1A) and 28 of the Act in view of the law laid down by the Apex Court in *Siddappa Vasappa Kuri and another –v- Special Land Acquisition Officer and another, 2002 (1)*

SCC 142. Thus the relief granted by learned District Judge stands modified as under: -

a) The respondent herein shall be entitled to solatium at the rate of 30% on the market value as assessed by the District Judge.

b) Additional compensation under section 23 (1) (a) at the rate of 12% per annum on the market value of the land from the date of issuance of notification under Section 4 of the Act till the date of award.

c) Interest under Section 28 of the Act on the enhanced amount at the rate of 9% per annum from the date of issuance of the notification under Section 4 of the Act for one year and thereafter at the rate of 15% per annum till date of payment on the enhanced amount.

While maintaining the market value of the acquired land as assessed by the District Judge, the statutory interest as mentioned above is hereby modified. Thus the appeal is partly allowed. The matter is accordingly disposed of.

Parties are left to bear their own costs.

(Surinder Singh)
Judge.

July 20 , 2007.
(bm)